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7 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 CLIFTON KELLY BELL,)

10 Plaintiff,)

11 v.)

12 KING COUNTY, *et al.*,)

13 Defendants.)

Case No. C07-1790-RSM-JPD

REPORT AND RECOMMENDATION

14 INTRODUCTION AND SUMMARY CONCLUSION

15 This is a civil rights action brought under 42 U.S.C. § 1983. Plaintiff alleges in his amended
16 complaint that he was improperly placed in custody by King County District Court Judge Linda
17 Thompson on August 17, 2007. Plaintiff further alleges that he was placed in a cell at the King
18 County Jail that lacked running water or a working toilet. Finally, plaintiff alleges that two Seattle
19 Police Officers, E. Robertson and D. Norton, acted improperly when they arrested him on September
20 23, 2007.

21 Defendants Thompson and King County have now filed a motion to dismiss. Plaintiff has filed
22 no response to that motion. The Court, having reviewed the pending motion to dismiss, and the
23 balance of the record, concludes that the motion to dismiss should be granted, and that plaintiff's
24 amended complaint should be dismissed as to defendants Thompson and King County.

25 REPORT AND RECOMMENDATION

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1 judge will not be deprived of immunity because the action he took was in error, was done maliciously,
2 or was in excess of his authority.” *Stump*, 435 U.S. at 356. The Supreme Court further explained that
3 the relevant inquiry in determining whether an act by a judge is a ‘judicial’ one “relate[s] to the nature
4 of the act itself; *i.e.*, whether it is a function normally performed by a judge, and to the expectations of
5 the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.” *Id.* at 362.

6 Plaintiff’s allegations against defendant Thompson arise out of a proceeding which was
7 conducted by this defendant in her role as a judge of the King County District Court. It is clear from
8 the record that defendant Thompson had subject matter jurisdiction over plaintiff’s case when she
9 ordered that plaintiff be placed in custody. *See* RCW 3.66.060 (the district court has concurrent
10 jurisdiction with the superior court over all misdemeanors and gross misdemeanors committed in their
11 respective counties), and RCW 9A.36.041 (fourth degree assault is a gross misdemeanor). It also
12 appears clear that, at the time of plaintiff’s interaction with her, defendant Thompson was performing
13 a function normally performed by judges and plaintiff was dealing with her in her judicial capacity.
14 None of the facts alleged by plaintiff suggest to the contrary. Defendant Thompson is therefore
15 entitled to absolute immunity in this § 1983 action. Accordingly, defendants’ motion to dismiss should
16 be granted with respect to plaintiff’s claim against defendant Thompson.

17 King County

18 Plaintiff alleges in his amended complaint that while in custody at the King County Jail, he was
19 placed in a cell in administrative segregation that did not have running water or a working toilet.
20 Defendants argue in their motion to dismiss that plaintiff has not adequately alleged a cause of action
21 against King County.

22 In order to sustain a civil rights action under § 1983, a plaintiff must show (1) that he suffered
23 a violation of rights protected by the Constitution or created by federal statute, and (2) that the
24 violation was proximately caused by a person acting under color of state or federal law. *See*

1 *Crumpton v. Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). A local government unit or municipality can
2 be sued as a “person” under § 1983. *Monell v. Department of Social Servs., of City of New York*, 436
3 U.S. 658, 691 (1978). However, a municipality cannot be held liable under § 1983 solely because it
4 employs a tortfeasor. *Id.* A plaintiff seeking to impose liability on a municipality under § 1983 must
5 identify a municipal “policy” or “custom” that caused his or her injury. *Bryan County Commissioners*
6 *v. Brown*, 520 U.S. 397, 403 (1997) (citing *Monell*, 436 U.S. at 694).

7 Plaintiff does not specifically identify in his amended complaint any policy or custom of King
8 County which caused him harm of constitutional dimension.¹ Defendants’ motion to dismiss should
9 therefore be granted with respect to plaintiff’s claim against King County as well.

10 CONCLUSION

11 For the foregoing reasons, this Court recommends that defendants’ motion to dismiss be
12 granted and that this action be dismissed, with prejudice, as to Judge Linda Thompson and King
13 County. A proposed order accompanies this Report and Recommendation.

14 DATED this 24th day of April, 2008.

15 
16 JAMES P. DONOHUE
17 United States Magistrate Judge
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22 ¹ The Court notes that in an order declining to serve plaintiff’s original complaint and granting
23 plaintiff leave to file an amended complaint, plaintiff was specifically advised that if he were to elect to
24 pursue a claim against King County he would have to identify the municipal policy or custom that he
25 believed caused his injury. (See Dkt. No. 7.) Thus, plaintiff has had ample notice of the requirements
26 for stating a viable cause of action against King County. Plaintiff is apparently unable to meet those
requirements.